

PDC Interpretation

APPROVAL DATE:	January 28, 2003	NUMBER:	02-03
STATUS:	Effective January 28, 2003	SUPERSEDES:	Prior Protocols
REFERENCES:	RCW 42.17.240 RCW 42.17.241 RCW 42.17.370(10) WAC 390-24 WAC 390-28 "F-1" Form (Personal Financial Affairs Statement) PDC Declaratory Order No. 7 PDC Interpretation 91-01 "Personal Financial Affairs Statement – Instruction Manual and Blank Forms"	APPROVED BY:	The Commission

Requests for Modification of the Requirements to Report Information on the Personal Financial Affairs Statement (F-1) For Lawyers and Law Firms

Background

The Public Disclosure Commission enforces the election and campaign reporting requirements in chapter 42.17 RCW. The statutes require certain candidates and public officials to report their financial affairs on a "Personal Financial Affairs Statement" (an "F-1" form). RCW 42.17.240, RCW 42.17.241. The Commission is authorized to allow modifications or suspensions of these reporting requirements under RCW 42.17.370(10) when it finds that "literal application" of the chapter "works a manifestly unreasonable hardship" and that the suspension or modification of the reporting requirements "will not frustrate the purposes of the chapter." The Commission shall suspend or modify the reporting requirement or requirements only to the extent necessary to substantially relieve such hardship, and only upon clear and convincing proof of such claim.

The PDC has adopted rules to further identify reporting modification/suspension procedures. Those rules are in WAC 390-28. The procedures include making the request in writing, and requesting a hearing. The requester is not required to attend the hearing in person and may instead submit a written, sworn statement. The possible qualifications for obtaining a reporting modification with respect to an F-1 Form are identified in WAC 390-28-100.

In addition, due to the volume and similarity of modification or suspension requests concerning F-1 Forms from certain professions, the Commission has also developed a series of “protocols” that interpret the statute and rules with respect to those professions. The protocols enable easier consideration of such requests. Those protocols are now being provided in this single interpretation.

PDC Interpretation

Lawyers and Law Firms Protocol (When Applicant is an Incumbent and Acts Alone or as Part of a Governing Body, Board or Commission)

The following language is to be used when the applicant must report the activities of a law firm because of the relationship to the firm by the applicant.

The following language is to be used when the applicant is an **incumbent** (holds office or the position) and either acts alone, or as part of a governing body, board, or commission.

1. The applicant may satisfy the reporting requirements of RCW 42.17.241(1)(g)(ii) by identifying for the appropriate reporting period:

(a) The names of the reportable business clients for whom the applicant has done legal work 1;

¹Ordinarily, the identity of a client does not fall within the purview of the information protected by the attorney-client privilege unless there is a “strong probability” that the disclosure would convey the substance of a confidential communication between client and attorney. Splash Design, Inc. v. Lee, 104 Wn.App. 38, 14 P.3d 879 (2001) (describing Rule of Professional Conduct 1.6 and citing to Dietz v. Doe, 131 Wn.2d 835, 935 P.2d 611 (1997)); Tegland, Washington Practice, Vol. 5A, § 501.15 (1999); United States v. Hunton & Williams, 952 F.Supp. 843 (D.C. 1997)(under federal law, absent special circumstances, identity of a client of a lawyer or law firm is not protected by attorney-client privilege); C.K. Liew v. Breen, 640 F.2d 1046 (9th Cir. 1981) (citing to California law for same proposition, and to J. Wigmore, Evidence § 2313).

(b) Other reportable business clients of the law firm whose interests are significantly affected by the applicant's actions in the applicant's official capacity as **(name of office or position held)** whose identities become known to the applicant by any means; **(If applicable, list name of governing body, board or commission)**

(c) The names of the reportable business clients of the law firm when:

- (i) the names are listed in Martindale Hubbell, the firm's publicity brochure(s), or the firm's resume, website, or similar promotional materials of the firm; or,
- (ii) the identities are otherwise publicized or referenced in documents open for public inspection at the courts, in administrative hearings, or at other public agencies; or
- (iii) the identities have been disclosed in documents made available for public inspection at open public meetings of public agencies; or,
- (iv) the identities have been made a matter of public knowledge in other similar public forums, and

(d) All governmental clients that have done business with the law firm. 2

2. Where the identity of the clients of a lawyer or law firm is not otherwise a matter of public record or public knowledge and thus automatically disclosable under 1(c) or 1(d), the responsibility is placed upon the attorney to obtain the consent of the reportable business or corporate clients to enable the reporting of those client identities.

²The names of governmental clients are matters of public knowledge in listings in Martindale Hubbell; the firm's publicity brochure(s), websites, or other promotional materials; or the firm's resume. The names of government clients are also matters of public knowledge in records that disclose that the firm is representing the client, including but not limited to documents reflecting payments of public funds from the governmental agency to the law firm; court filings; filings in administrative hearings; and in public records. See definition of public record at RCW 42.17.020(36) and (42).

Lawyers and Law Firms Protocol
(When Applicant is a Candidate (Not an Incumbent office Holder) and Acts Alone or as Part of a Governing Body, Board or Commission)

The following language is to be used when the applicant must report the activities of a law firm because of the relationship to the firm by the applicant.

The following language is to be used when the applicant is a **candidate** (does not hold office) and if elected, will either act alone or as part of a governing body, board or commission.

1. The applicant may satisfy the reporting requirements of RCW 42.17.241(1)(g)(ii) by identifying for the appropriate reporting period:

- (a) The names of the reportable business clients for whom the applicant has done legal work 3;
- (b) Other reportable business clients of the law firm whose interests are significantly affected by the actions of the office of **(the office being sought)** whose identities become known to the applicant by any means; **(If applicable, list name of governing body, board or commission)**
- (c) The names of the reportable business clients of the law firm when:
 - (i) the names are listed in Martindale Hubbell, the firm's publicity brochure(s), or the firm's resume, website, or similar promotional materials of the firm; or,
 - (ii) the identities are otherwise publicized or referenced in documents open for public inspection at the courts, in administrative hearings, or at other public agencies; or
 - (iii) the identities have been disclosed in documents made available for public inspection at open public meetings of public agencies; or,
 - (iv) the identities have been made a matter of public knowledge in other similar public forums, and

³Ordinarily, the identity of a client does not fall within the purview of the information protected by the attorney-client privilege unless there is a "strong probability" that the disclosure would convey the substance of a confidential communication between client and attorney. Splash Design, Inc. v. Lee, 104 Wn.App. 38, 14 P.3d 879 (2001) (describing Rule of Professional Conduct 1.6 and citing to Dietz v. Doe, 131 Wn.2d 835, 935 P.2d 611 (1997)); Tegland, Washington Practice, Vol. 5A, § 501.15 (1999); United States v. Hunton & Williams, 952 F.Supp. 843 (D.C. 1997)(under federal law, absent special circumstances, identity of a client of a lawyer or law firm is not protected by attorney-client privilege); C.K. Liew v. Breen, 640 F.2d 1046 (9th Cir. 1981) (citing to California law for same proposition, and to J. Wigmore, Evidence § 2313).

(d) All governmental clients that have done business with the law firm. 4

2. Where the identity of the clients of a lawyer or law firm is not otherwise a matter of public record or public knowledge and thus automatically disclosable under 1(c) or 1(d), the responsibility is placed upon the attorney to obtain the consent of the reportable business or corporate clients to enable the reporting of those client identities.

⁴The names of governmental clients are matters of public knowledge in listings in Martindale Hubbell; the firm's publicity brochure(s), websites, or other promotional materials; or the firm's resume. The names of government clients are also matters of public knowledge in records that disclose that the firm is representing the client, including but not limited to documents reflecting payments of public funds from the governmental agency to the law firm; court filings; filings in administrative hearings; and in public records. See definition of public record at RCW 42.17.020(36) and (42).